

2 **ESSB 6513** - S AMD - 309
3 By Senator Prentice

4

5 Strike everything after the enacting clause and insert the
6 following:

7 "NEW SECTION. **Sec. 1.** INTENT. (1) The legislature finds that
8 every entity has an affirmative and continuing obligation to respect
9 the privacy of its consumers and to protect the security and
10 confidentiality of consumers. The legislature finds that Washington's
11 citizens have a right to privacy and a reasonable expectation that the
12 personal information that they provide in commercial transactions with
13 financial institutions and others who maintain and transfer information
14 will be kept private and confidential. The legislature finds that
15 there is no existing uniform law that creates an appropriate standard
16 of conduct for disclosure of consumers' personal information and that
17 Washington's citizens need additional statutory protection from fraud,
18 deception, nuisance, invasion of privacy, and breach of confidentiality
19 related to the disclosure of personal information. The legislature
20 intends to ensure that entities and consumers work cooperatively to
21 protect consumer information and enforce sanctions when violations
22 occur.

23 (2) The legislature finds that the disclosure of personal and
24 sensitive information has caused specific significant harms to
25 Washington consumers, including the appearance of unauthorized charges
26 or debits on consumers' accounts, misappropriation of sensitive
27 information for the purpose of assuming a consumer's identity, the
28 unwanted and unintended dissemination of personal and sensitive
29 information, and the invasion of privacy.

30 (3) The legislature finds that the flow of less sensitive personal
31 information has resulted in a number of increased market efficiencies
32 that are beneficial to consumers. These include more rapid credit
33 transactions and check verifications, as well as an increased number of
34 choices for products and services. The legislature finds that these
35 benefits can be maintained by giving consumers the opportunity to
36 choose whether their less sensitive information will be shared. The

1 legislature finds that giving consumers this choice best balances the
2 benefits and harms of disclosure of such information.

3 (4) The legislature finds that the incidence of identity theft is
4 rapidly growing, and that victims of identity theft need further
5 assistance in obtaining the information necessary to the prosecution of
6 their cases. The legislature finds that requiring additional
7 information sharing by merchants with victims will result in greater
8 protections for consumers and deter potential perpetrators.

9 NEW SECTION. **Sec. 2.** DEFINITIONS. Unless the context clearly
10 requires otherwise, the definitions in this section apply throughout
11 this chapter.

12 (1) "Affiliate" means an entity that controls, is controlled by, or
13 is under common control or common ownership with another entity.
14 Companies that form alliances as a financial services group for
15 purposes of marketing their services and are located at a common
16 address, have personnel and payroll functions administered through a
17 central office, jointly sponsor one combined employee savings and
18 profit sharing plan, and have centralized data processing, mail
19 service, communications, and procurement are considered under common
20 control and affiliated with each other.

21 (2) "Consumer" or "customer" means a natural person or his or her
22 legal representative, who is a resident of the state of Washington, who
23 has been disclosed to be a resident of the state of Washington, and who
24 purchases, leases, or otherwise contracts for products, goods, or
25 services within the state of Washington or from an entity at its
26 location in the state of Washington, that are primarily used for
27 personal, family, or household purposes on or after the effective date
28 of this section and who continues to be a resident of the state of
29 Washington.

30 (3) "Control" means (a) ownership, control, or power to vote
31 twenty-five percent or more of the outstanding shares of any class of
32 voting security of the company, directly or indirectly, or acting
33 through one or more other persons, if the company is shareholder-owned;
34 (b) control in any manner over the election of a majority of the
35 directors, trustees, or general partners (or individuals exercising
36 similar functions) of the company; and (c) the power to exercise,
37 directly or indirectly, a controlling influence over the management or
38 policies of the company.

1 (4) "Consumer-requested purpose" means for the purpose of
2 establishing or maintaining a business relationship, completing a
3 transaction, or providing a product, good, or service requested by the
4 consumer if the personal or sensitive information that is sold, shared,
5 or transferred is subject to section 9(1) of this act.

6 (5) "De minimus cost method" means any method, such as a toll-free
7 telephone number, a post office box or address for accepting first-
8 class mail, or any similar, convenient, low-cost method, which does not
9 exceed the cost of a first-class postage stamp for the consumer. If
10 other de minimus cost methods are offered, accepting e-mail or online
11 messages from consumers shall be considered a de minimus cost method.

12 (6) "Financial institution" means (a) a financial institution as
13 defined in section 527(4) of the Gramm-Leach-Bliley Act, P.L. 106-102;
14 or (b) a bank holding company or financial holding company, as defined
15 in sections 2(a) and 2(p) of the Bank Holding Company Act, as amended,
16 or any subsidiary thereof as defined in section 2(d) of the Bank
17 Holding Company Act, as amended.

18 (7) "Functional business purpose" means use or disclosure of
19 sensitive or personal information between an information custodian and
20 another entity or person to perform services or functions on behalf of
21 the information custodian as part of the information custodian's
22 provision of its products, goods, or services to its customers, or to
23 assist in the maintenance or analysis of its relationships with
24 customers, if the personal or sensitive information that is sold,
25 shared, or transferred is subject to section 9 of this act;

26 (8) "Information custodian" means all nonpublic commercial entities
27 that maintain data containing personal information or sensitive
28 information about consumers they actually know reside in Washington and
29 that sell, share, or otherwise transfer the information to
30 nonaffiliates for purposes other than consumer-requested purposes,
31 functional business purposes, or under the circumstances described in
32 section 5(3) or 7(3) of this act. An "information custodian" does not
33 include a consumer reporting agency, as defined in the federal Fair
34 Credit Reporting Act (15 U.S.C. Sec. 1681 et seq.), to the extent its
35 activities are directly related to assembling or evaluating consumer
36 credit information or other information on consumers for the purpose of
37 furnishing consumer reports to third parties, and to the extent that
38 the activities are regulated by the federal Fair Credit Reporting Act
39 (15 U.S.C. Sec. 1681 et seq.). "Information custodian" does not

1 include an agent or other entity (a) who obtains personal or sensitive
2 information from a consumer or an information custodian; and (b) who
3 has contracted, in writing, with the information custodian to provide
4 products, goods, or services on behalf of the information custodian,
5 that are part of or integral to the provision of the information
6 custodian's own products, goods, or services to the consumer; and (c)
7 who does not make an independent use, including marketing use, of the
8 personal or sensitive information, apart from providing the products,
9 goods, or services described in subsection (8)(b) of this section; and
10 (d) who is subject to section 9 of this act. "Information custodian"
11 does not include an entity that sells, shares, or transfers personal or
12 sensitive information exclusively for consumer-requested purposes,
13 functional business purposes, or under the circumstances described in
14 section 5(3) or 7(3) of this act.

15 (9) "Marketer" means a nonpublic, commercial entity that maintains
16 data containing personal information or sensitive information about
17 consumers it knows reside in Washington and uses the information to
18 engage in marketing.

19 (10) "Marketing" or "marketing information" means a promotion,
20 solicitation, or advertisement that specifically references the sale or
21 lease of products, goods, or services made through written, telephonic,
22 electronic, or other means, that is directed to a specific named
23 consumer, but shall not include any promotion, solicitation, or
24 advertisement (a) included with a billing or statement, (b) directed to
25 the public, or (c) made to such consumer while present at the
26 marketer's place of business or during any other contact with the
27 marketer initiated by or at the request of the consumer.

28 (11) "Personal information" means information that is provided by
29 the consumer in a commercial context, and is correlated to a specific
30 individual consumer, that concerns the amount or condition of the
31 consumer's assets, liabilities, financial transactions, purchasing
32 history, buying preferences, business relationships, customer status,
33 demographic information, name, address, telephone number, electronic
34 mail address, or that reflects current or historical deposit or credit
35 card account balances or purchase amounts.

36 (12) "Sensitive information" means information maintained in a
37 commercial context that is correlated to a specific individual consumer
38 or a specific account and customarily held or used for the purpose of
39 the consumer's transaction initiation, account access or identity

1 verification, and includes account numbers, access codes or passwords,
2 social security numbers, consumer tax identification numbers, driver's
3 license or permit numbers, state identicard numbers issued by the
4 department of licensing, and credit card numbers or expiration dates,
5 and electronically captured signatures.

6 NEW SECTION. **Sec. 3.** RESTRICTION ON CONSUMER INFORMATION.
7 Information custodians and marketers shall, in performing a transaction
8 with a consumer, providing a service for a consumer, or establishing a
9 business relationship with a consumer, require only that the consumer
10 provide information reasonably necessary to perform the transaction,
11 establish the relationship, administer or maintain the business
12 relationship, collect or service a debt, protect against fraud or
13 unauthorized transactions, or comply with applicable law. Any optional
14 information must be specified as such, and the consumer must be given
15 the option not to provide it.

16 NEW SECTION. **Sec. 4.** CONSUMER PRIVACY POLICIES. (1) An
17 information custodian must have a consumer privacy policy that
18 discloses to existing and prospective consumers the policies and
19 practices of the information custodian regarding the use of consumer
20 personal information and sensitive information acquired or possessed by
21 the information custodian. Entities that maintain data containing
22 personal information or sensitive information but do not sell, share,
23 or otherwise transfer the data, are not required to have a privacy
24 policy.

25 (2) The consumer privacy policy, at a minimum, must summarize the
26 information custodian's responsibilities under this chapter and
27 describe the consumer's rights and remedies under it, and generally
28 describe with whom the consumer's personal and sensitive information
29 will be shared or to whom it will be sold or transferred. This general
30 description must disclose either the names of those with which the
31 information is shared, sold, or transferred or a reasonable description
32 of the nature of each entity's business, with which information is
33 shared, sold, or transferred.

34 (3) The consumer privacy policy must also provide a reasonable
35 means for consumers to review their personal information that the
36 information custodian shares, sells, or transfers to nonaffiliates for
37 marketing purposes and that is retrievable in the ordinary course of

1 business. The policy must also provide a reasonable process for
2 consumers to dispute the accuracy or completeness of the information.

3 (4) An information custodian must provide a disclosure of its
4 consumer privacy policy to customers about whom it has names and
5 addresses or other means of contact:

6 (a) Within a reasonable period of time after the information
7 custodian obtains the names and addresses or other means of contact;

8 (b) Not less than annually after that to a customer whose personal
9 or sensitive information the information custodian, within the twelve-
10 month period before the date of the provision of the policy, has sold,
11 shared, or transferred to a nonaffiliate other than under the
12 circumstances described in section 5(3) or 7(3) of this act, for a
13 customer requested purpose, or for a functional business purpose; and

14 (c) Not less than thirty days after a prospective customer's
15 initial request for the policy.

16 (5) An information custodian that is not a financial institution
17 must disclose its consumer privacy policy, and any material changes
18 that are made to the policy or the information custodian's business
19 structure, clearly and conspicuously in writing, through means
20 reasonably calculated to inform new customers of the policy's
21 provisions or material changes that are made to the policy or the
22 information custodian's business structure.

23 (6) If the information custodian sells or offers products, goods,
24 or services online, the privacy policy must be disclosed on the
25 effective date of this section, on a continuing basis, clearly and
26 conspicuously, on a web page that is directly and prominently linked to
27 the information custodian's website.

28 (7) The consumer privacy policy must be readily available for
29 review at the information custodian's place of business.

30 (8) An information custodian that is a financial institution is
31 deemed to have complied with the requirements of this section and
32 section 5(1)(a) of this act if it provides the disclosures required by
33 subsections (1), (2), and (3) of this section and section 5(1)(a) of
34 this act together with the disclosures provided in compliance with
35 section 503 of Public Law 106-102 (the Gramm-Leach-Bliley Act).

36 (9) If an information custodian's business relationship is with
37 multiple parties who are named in a common account or insurance policy,
38 the information custodian satisfies the requirements of this section by
39 making the required disclosures to the first-named account holder or

1 legal representative on the signature card, contract, or other evidence
2 of the account, or the first-named insured on the insurance policy,
3 binder, or other evidence of insurance.

4 NEW SECTION. **Sec. 5. PERSONAL INFORMATION--CONSUMER CONTROL.** (1)

5 An information custodian may share, sell, or otherwise transfer
6 personal information to a nonaffiliate for purposes other than
7 consumer-requested purposes, functional business purposes, or under the
8 circumstances described in section 5(3) or 7(3) of this act, only if it
9 has clearly and conspicuously disclosed to the consumer the following
10 information in plain language:

11 (a) That the consumer has the right to choose not to have his or
12 her personal information shared, sold, or otherwise transferred to a
13 nonaffiliate for purposes other than consumer-requested purposes,
14 functional business purposes, or under the circumstances described in
15 section 5(3) or 7(3) of this act. The disclosure must be made at the
16 time the consumer privacy policy is provided to the customer under
17 section 4 of this act.

18 (b) That the consumer may choose not to have his or her personal
19 information shared, sold, or transferred to a nonaffiliate for other
20 than consumer-requested purposes, functional business purposes, or
21 under the circumstances described in section 5(3) or 7(3) of this act,
22 by exercising his or her choice through a de minimus cost method the
23 information custodian has established.

24 (2) If, under this section, a consumer chooses not to have his or
25 her personal information shared, sold, or otherwise transferred under
26 subsection (1) of this section, the information custodian must stop
27 sharing, selling, or otherwise transferring the consumer's personal
28 information to a nonaffiliate as directed by the consumer within ninety
29 days of receiving the consumer's notice. Once a consumer has exercised
30 his or her right under this section, an information custodian may not
31 share, sell, or otherwise transfer the information to a nonaffiliate
32 for purposes other than consumer-requested purposes, functional
33 business purposes, or under the circumstances described in section 5(3)
34 or 7(3) of this act, until the consumer notifies the entity that he or
35 she has chosen to have his or her personal information shared, sold, or
36 otherwise transferred under subsection (1) of this section.

37 (3) This section does not apply to disclosure of personal
38 information under the following circumstances:

1 (a) Disclosure to or at the direction or with the consent of the
2 consumer upon his or her request. Proper identification may be
3 required;

4 (b) Disclosure required by federal, state, or local law or
5 regulation, rules, and other applicable legal requirements;

6 (c) Disclosure made in the course of a properly authorized civil,
7 criminal, or regulatory examination or investigation or under a search
8 warrant, court order, or subpoena, including an administrative subpoena
9 or other legal process;

10 (d) Disclosure to a nonaffiliate for the purpose of collecting a
11 debt or dishonored item. However, the recipient of the information is
12 subject to section 9 of this act;

13 (e) Disclosure to protect the confidentiality or security of the
14 information custodian's records;

15 (f) Disclosure to protect against, investigate, or prevent actual
16 or potential fraud, unauthorized transactions, claims, or other
17 liability or to verify information provided by a consumer in connection
18 with a claim or application for services or benefits;

19 (g) Disclosure as part of a risk control program required by or
20 subject to examination by regulators;

21 (h) Disclosure by or to a consumer reporting agency as specifically
22 permitted under the federal Fair Credit Reporting Act (15 U.S.C. Sec.
23 1681 et seq.). However, the information custodian shall inform the
24 recipient that the information is subject to section 9 of this act;

25 (i) Disclosure for purposes of a proposed or actual securitization,
26 secondary market sale (including sales of service rights), or similar
27 transaction;

28 (j) Disclosure to persons holding a legal or beneficial interest
29 relating to the consumer;

30 (k) Disclosure in order to provide information to insurance rate,
31 claim, or underwriting advisory organizations, guaranty funds or
32 agencies, applicable rating agencies of the information custodian,
33 persons assessing the information custodian's compliance with industry
34 standards, and the information custodian's attorneys, accountants, and
35 auditors;

36 (l) Disclosure in connection with a proposed or actual sale,
37 merger, transfer, or exchange of all or a portion of a business or
38 operating unit or an insurance agent's book of business or interest in
39 real property if the disclosure of information concerns solely

1 consumers of the business or unit or consumers with a right to occupy
2 the real property;

3 (m) Disclosure to a federal, state, or local agency as required by
4 that agency to fulfill its legal obligations on behalf of a consumer;

5 (n) Disclosure of health care information in compliance with state
6 and federal law;

7 (o) Disclosure between licensees or franchisees and their licensors
8 or franchisors, when (i) such licensees or franchisees market, sell, or
9 lease products, goods, or services in a retail setting at a common
10 physical address with the licensor or franchisor; (ii) have common data
11 processing functions with the licensor or franchisor; and (iii)
12 advertise, market, or sell products, goods, or services marked or
13 otherwise directly identified with the franchisor's or licensor's name
14 or distinctive brand. However, the recipient of the information is
15 subject to section 9 of this act;

16 (p) Disclosure of information between entities of a reciprocal
17 insurer as defined in RCW 48.10.010 and 48.10.020;

18 (q) Disclosure to maintain or service a consumer's private label or
19 affinity credit card account. However, the recipient of the
20 information is subject to section 9 of this act;

21 (r) Disclosure by an entity or person to the public related to the
22 gathering, publishing, disseminating, or circulating of news or matters
23 of public interest or concern;

24 (s) Disclosure to or by a multiple listing service, real estate
25 licensee, or real estate appraiser as defined in chapters 18.85 and
26 18.140 RCW for the purposes of comparative market analyses, price
27 opinions, or appraisals.

28 NEW SECTION. **Sec. 6.** MARKETING-CONSUMER CONTROL. (1)(a) A
29 marketer may use personal or sensitive information for marketing
30 purposes only if it has clearly and conspicuously disclosed in plain
31 language to the consumer that the consumer has the right to choose not
32 to receive marketing information from the marketer or its affiliates
33 with which it has shared information and may choose not to receive
34 marketing information by exercising his or her choice through a de
35 minimus cost method provided by the marketer. These disclosures must
36 be made in at least one of the following manners:

37 (i) In all marketing information, in whatever medium the marketing
38 information is sent;

(ii) In the privacy policy provided to the consumer under section 4 of this act, if the marketer is an information custodian;

(iii) In a separate disclosure document or page, provided to the consumer with the first marketing information sent to the consumer, and thereafter annually. If the disclosure is made on a web page, it must be made clearly and conspicuously on the same page as the marketing information or on a separate page that is directly and prominently linked to the marketing information;

(iv) In each of its places of retail business, if the marketer is a retailer whose primary sale or lease of products, goods, or services is from its places of retail business, and the disclosure must be posted clearly and conspicuously, in plain language.

(b) The marketer must maintain adequate and reasonable access to the de minimus cost method it has established for consumers who choose not to receive marketing information.

(2) If, under this section, a consumer chooses not to receive marketing information, the marketer and its affiliates with which it shares personal or sensitive information must stop marketing to the consumer within ninety days of receiving the consumer's notice. Once a consumer has chosen not to receive marketing information, a marketer and its affiliates with which it shares personal or sensitive information may not market to the consumer until the consumer notifies the marketer that he or she has chosen to receive marketing information.

(3) A small business, as defined in RCW 19.85.020, that is not an information custodian, that markets solely to its existing customers or that markets to consumers whose personal information was obtained from an information custodian, is not subject to subsection (1) of this section.

(4) A marketer may disclose personal information to another entity to perform services or functions on behalf of the marketer, as part of the marketer's marketing of its own products, goods, or services. However, the personal information that is disclosed is subject to section 9 of this act.

NEW SECTION. Sec. 7. SENSITIVE INFORMATION--CONSUMER CONTROL.

(1) An information custodian may not disclose sensitive information to a nonaffiliate for purposes other than consumer-requested purposes, functional business purposes, or under the circumstances described in

1 section 5(3) or 7(3) of this act unless the consumer has received
2 written notification of the following:

3 (a) The information to be disclosed;

4 (b) The entity or entities authorized to receive the disclosure of
5 information; and

6 (c) A specific description of the purpose for which the disclosure
7 of information will be made.

8 (2) An information custodian may not disclose sensitive information
9 to a nonaffiliate for purposes other than consumer-requested purposes,
10 functional business purposes, or under circumstances described in
11 section 5(3) or 7(3) of this act unless the consumer, upon notice as
12 provided in this section and affirmative consent, authorizes the
13 disclosure of the sensitive information sought to be disclosed, in a
14 written statement dated and expressly accepted by the consumer that is
15 separate and distinct from any other document, and that contains a
16 description of the information sought to be disclosed and the purpose
17 for which the information will be disclosed. If the written statement
18 is made online, it must be on a separate web page.

19 (3) This section does not apply to disclosure of sensitive
20 information under the following circumstances:

21 (a) Disclosure to or at the direction or with the consent of the
22 consumer upon his or her request. Proper identification may be
23 required;

24 (b) Disclosure required by federal, state, or local law or
25 regulation, rules, and other applicable legal requirements;

26 (c) Disclosure made in the course of a properly authorized civil,
27 criminal, or regulatory examination or investigation or under a search
28 warrant, court order, or subpoena, including an administrative subpoena
29 or other legal process;

30 (d) Disclosure to a nonaffiliate for the purpose of collecting a
31 debt or a dishonored item. However, the recipient of the information
32 is subject to section 9 of this act;

33 (e) Disclosure to protect the confidentiality or security of the
34 information custodian's records;

35 (f) Disclosure to protect against, investigate, or prevent actual
36 or potential fraud or unauthorized transactions, claims, or other
37 liability or to verify information provided by a consumer in connection
38 with a claim or application for services or benefits;

1 (g) Disclosure as part of a risk control program required by or
2 subject to examination by regulators;

3 (h) Disclosure by or to a consumer reporting agency as specifically
4 permitted under the federal Fair Credit Reporting Act (15 U.S.C. Sec.
5 1681 et seq.). However, the information custodian shall inform the
6 recipient that the information is subject to section 9 of this act;

7 (i) Disclosure of sensitive information which is prohibited from
8 disclosure by section 502(d) of Public Law 106-102 (the Gramm-Leach-
9 Bliley Act of 1999);

10 (j) Disclosure for purposes of a proposed or actual securitization,
11 secondary market sale (including sales service rights), or similar
12 transactions related to a consumer-requested purpose;

13 (k) Disclosure to persons holding a legal or beneficial interest
14 relating to the consumer;

15 (l) Disclosure in order to provide information to insurance rate,
16 claim, or underwriting advisory organizations, guaranty funds or
17 agencies, applicable rating agencies of the information custodian,
18 persons assessing the information custodian's compliance with industry
19 standards, and the information custodian's attorneys, accountants, and
20 auditors;

21 (m) Disclosure in connection with a proposed or actual sale,
22 merger, transfer, or exchange of all or a portion of a business or
23 operating unit or an insurance agent's book of business or interest in
24 real property if the disclosure of information concerns solely
25 consumers of the business or unit or consumers with the right to occupy
26 the real property;

27 (n) Disclosure of health care information in compliance with state
28 and federal law;

29 (o) Disclosure to a federal, state, or local agency as required by
30 that agency to fulfill its legal obligations on behalf of a consumer;

31 (p) Disclosure between licensees or franchisees and their licensors
32 or franchisors, when (i) such licensees or franchisees market, sell, or
33 lease products, goods, or services in a retail setting at a common
34 physical address with the licensor or franchisor; (ii) have common data
35 processing functions with the licensor or franchisor; and (iii)
36 advertise, market, or sell products, goods, or services marked or
37 otherwise directly identified with the franchisor's or licensor's name
38 or distinctive brand. However, the recipient of the information is
39 subject to section 9 of this act;

1 (q) Disclosure of information between entities of a reciprocal
2 insurer as defined in RCW 48.10.010 and 48.10.020;

3 (r) Disclosure to maintain or service a consumer's private label or
4 affinity credit card account. However, the recipient of the
5 information is subject to section 9 of this act;

6 (s) Disclosure by an entity or person to the public related to the
7 gathering, publishing, disseminating, or circulating of news or matters
8 of public interest or concern.

9 NEW SECTION. **Sec. 8.** An information custodian shall not disclose,
10 to a nonaffiliate, other than for a functional business purpose or a
11 consumer-requested purpose, sensitive information for use in marketing
12 to the consumer.

13 NEW SECTION. **Sec. 9.** CONFIDENTIALITY AND SECURITY OF INFORMATION.
14 (1) Nonaffiliates that obtain personal information or sensitive
15 information from information custodians, other than those who receive
16 driver's license numbers in connection with the offering or maintenance
17 of an insurance policy, must: (a) Not sell, share, or otherwise
18 transfer the information for any reason other than the allowed purposes
19 for which the information was sold, shared, or transferred by the
20 information custodian or under circumstances described in those
21 subsections of sections 5(3) or 7(3) of this act to which this section
22 is not expressly subject; (b) keep the information confidential; and
23 (c) safeguard the information from loss, misuse, theft, unauthorized
24 access, disclosure, defacement, or alteration.

25 (2) An information custodian, before sharing, selling, or otherwise
26 transferring personal information or sensitive information, must obtain
27 an agreement from the intended recipient providing for the following:

28 (a) To keep the information confidential;

29 (b) To use the information only for the allowed purposes for which
30 it has been shared, sold, or provided, or under circumstances described
31 in those subsections of sections 5(3) or 7(3) of this act to which this
32 section is not expressly subject; and

33 (c) To safeguard the information from loss, misuse, theft,
34 unauthorized access, disclosure, defacement, or alteration.

35 (3) Every information custodian must establish reasonable
36 safeguards to ensure the confidentiality and safety of personal
37 information and sensitive information and to protect them from loss,

1 misuse, theft, unauthorized access, disclosure, defacement, or
2 alteration.

3 NEW SECTION. **Sec. 10.** ACTIONS OR TRANSACTIONS BY COMPETITIVE
4 TELECOMMUNICATIONS COMPANIES. The actions or transactions of
5 information custodians or marketers who are classified as competitive
6 telecommunications companies under RCW 80.36.320 or who are
7 telecommunications companies providing competitive telecommunications
8 services are subject to this chapter and the Consumer Protection Act.

9 NEW SECTION. **Sec. 11.** VIOLATION AN UNFAIR OR DECEPTIVE ACT. (1)
10 Unfair and deceptive invasion of privacy rights is not reasonable in
11 relation to the development and preservation of business. The
12 legislature finds that the practices covered by this chapter are
13 matters vitally affecting the public interest for the purpose of
14 applying the Consumer Protection Act, chapter 19.86 RCW. A violation
15 of this chapter is an unfair or deceptive act in trade or commerce for
16 the purpose of applying the Consumer Protection Act, chapter 19.86 RCW.

17 (2) In any action for a violation of this chapter, with the
18 exception of section 7 of this act, an information custodian or
19 marketer may raise as a defense that the violation was not intentional
20 and was the result of a bona fide error. This defense must be proved
21 by a preponderance of the evidence. Examples of a bona fide error
22 include clerical, calculation, computer malfunction and programming,
23 and printing errors.

24 (3) Damages to a person who has been the victim of a violation of
25 sections 5, 7, 8, or 9(1) of this act are five hundred dollars, or
26 actual damages, whichever is greater. A court may increase the award
27 of damages in an amount not more than three times the actual damages
28 sustained, or one thousand five hundred dollars, whichever is greater,
29 upon a showing by a preponderance of the evidence that a violation of
30 the chapter was willful.

31 (4) Damages to a person who has been the victim of a violation of
32 section 3, 4, 6, or 9 (2) or (3) of this act are actual damages.
33 However, a court may increase the award up to five hundred dollars upon
34 a showing that the violation was willful, intentional, or part of a
35 pattern of repeated violations.

36 (5) In the case of a class action for a violation of this act, the
37 total recovery of statutory damages in any class action arising out of

1 the same failure to comply may not be more than the lesser of one
2 million dollars or one percent of the net worth of the defendant.
3 There is no limit on the recovery of actual damages.

4 (6) Nothing in this section limits the authority of the attorney
5 general to enforce this chapter, or seek full recovery of both
6 statutory and actual damages.

7 (7) The remedies provided for a violation of this chapter are
8 exclusive of the remedies provided for a violation of chapter 9.35 RCW.
9 No violation of this chapter is an unlawful activity under RCW
10 9.35.020(2) or under RCW 9.35.010.

11 NEW SECTION. **Sec. 12.** FILING ACTION--CONSEQUENCES. Filing an
12 action for a violation of this chapter constitutes a certificate that
13 to the best of the plaintiff's knowledge, information, and belief,
14 formed after reasonable inquiry, it is well grounded in fact and is
15 warranted by existing law or a good faith extension or reversal of
16 existing law, and that it is not brought for any improper purpose, such
17 as to harass or create a nuisance. If an action is filed in violation
18 of this section, the court, upon motion or upon its own initiative, may
19 impose upon the plaintiff an appropriate sanction, that may include an
20 order to pay to the other party or parties the amount of the reasonable
21 expenses incurred because of the filing of the action, including a
22 reasonable attorney's fee.

23 NEW SECTION. **Sec. 13.** FEDERAL INVALIDITY--ANTITRUST LAWS. If the
24 responsible federal chartering authority, under applicable federal law,
25 or if a court of competent jurisdiction declares that any provision of
26 this chapter is invalid with respect to any financial institution, the
27 provision is also invalid, to the same extent, with respect to
28 financial institutions chartered under the laws of the state of
29 Washington and to host branches of out-of-state financial institutions.
30 The director of the department of financial institutions may, from time
31 to time, publish provisions of state laws that have been found
32 invalidated under federal law and procedures. This section does not
33 impair in any manner the authority of the state attorney general to
34 enforce antitrust laws applicable to financial institutions or their
35 affiliates.

1 NEW SECTION. **Sec. 14.** REMEDIES NONEXCLUSIVE. Nothing in this
2 chapter in any way limits, replaces, or diminishes the protections and
3 remedies afforded by the Domestic Violence Prevention Act, chapter
4 26.50 RCW, or any other act intended to protect the privacy and safety
5 of residents of this state.

6 NEW SECTION. **Sec. 15.** A new section is added to chapter 9.35 RCW
7 to read as follows:

8 DEFINITIONS. As used in this chapter, unless the context clearly
9 requires otherwise:

10 (1) "Financial information" means, to the extent it is nonpublic,
11 any of the following information identifiable to the individual that
12 concerns the amount and conditions of an individual's assets,
13 liabilities, or credit:

14 (a) Account numbers and balances;

15 (b) Transactional information concerning an account; and

16 (c) Codes, passwords, social security numbers, tax identification
17 numbers, driver's license or permit numbers, state identicard numbers
18 issued by the department of licensing, and other information held for
19 the purpose of account access or transaction initiation.

20 (2) "Financial information repository" means a person engaged in
21 the business of providing services to customers who have a credit,
22 deposit, trust, stock, or other financial account or relationship with
23 the person.

24 (3) "Means of identification" means information or an item that is
25 not describing finances or credit but is personal to or identifiable
26 with an individual or other person, including a current or former name
27 of the person, telephone number, and electronic address or identifier
28 of the individual or a member of his or her family, including the
29 ancestor of the person; information relating to a change in name,
30 address, telephone number, or electronic address or identifier of the
31 individual or his or her family; a social security, driver's license,
32 or tax identification number of the individual or a member of his or
33 her family; and other information that could be used to identify the
34 person, including unique biometric data.

35 (4) "Person" means an individual, partnership, corporation, or
36 association.

37 (5) "Victim" means a person whose means of identification has been
38 used or transferred with the intent to commit, or to aid or abet, an

1 unlawful activity harming or intending to harm the person whose
2 identity is used, or to commit a felony.

3 NEW SECTION. **Sec. 16.** A new section is added to chapter 9.35 RCW
4 to read as follows:

5 INFORMATION AVAILABLE TO VICTIM. (1) A person, financial
6 information repository, corporation, trust, partnership, or
7 unincorporated association possessing information relating to an actual
8 or potential violation of this chapter, and who may have entered into
9 a transaction, provided credit, products, goods, or services, accepted
10 payment, or otherwise done business with a person who has used the
11 victim's means of identification, must, upon request of the victim,
12 provide copies of all information relevant to the potential or actual
13 violation of this chapter.

14 (2) Before providing the information required under subsection (1)
15 of this section, the provider may require the victim to provide
16 positive identification of the victim and a copy of a police report
17 evidencing the victim's claim. The provider may require reasonable
18 compensation for the reasonable cost of providing the information
19 requested.

20 (3) No person, financial information repository, corporation,
21 trust, partnership, or unincorporated association may be held liable
22 for an action voluntarily taken in good faith to provide information
23 regarding potential or actual violations of this chapter to other
24 financial information repositories, merchants, law enforcement
25 authorities, the victim, or any person alleging to be a victim who
26 provides positive identification and a copy of a police report
27 evidencing the alleged victim's claim for the purpose of identification
28 and prosecution of violators of this chapter, or to assist a victim in
29 recovery of fines, restitution, rehabilitation of the victim's credit,
30 or such other relief as may be appropriate.

31 **Sec. 17.** RCW 19.16.250 and 1983 c 107 s 1 are each amended to read
32 as follows:

33 No licensee or employee of a licensee shall:

34 (1) Directly or indirectly aid or abet any unlicensed person to
35 engage in business as a collection agency in this state or receive
36 compensation from such unlicensed person: PROVIDED, That nothing in
37 this chapter shall prevent a licensee from accepting, as forwarder,

1 claims for collection from a collection agency or attorney whose place
2 of business is outside the state.

3 (2) Collect or attempt to collect a claim by the use of any means
4 contrary to the postal laws and regulations of the United States postal
5 department.

6 (3) Publish or post or cause to be published or posted, any list of
7 debtors commonly known as "bad debt lists" or threaten to do so. For
8 purposes of this chapter, a "bad debt list" means any list of natural
9 persons alleged to fail to honor their lawful debts. However, nothing
10 herein shall be construed to prohibit a licensee from communicating to
11 its customers or clients by means of a coded list, the existence of a
12 check dishonored because of insufficient funds, not sufficient funds or
13 closed account by the financial institution servicing the debtor's
14 checking account: PROVIDED, That the debtor's identity is not readily
15 apparent: PROVIDED FURTHER, That the licensee complies with the
16 requirements of subsection (9)(e) of this section.

17 (4) Have in his possession or make use of any badge, use a uniform
18 of any law enforcement agency or any simulation thereof, or make any
19 statements which might be construed as indicating an official
20 connection with any federal, state, county, or city law enforcement
21 agency, or any other governmental agency, while engaged in collection
22 agency business.

23 (5) Perform any act or acts, either directly or indirectly,
24 constituting the practice of law.

25 (6) Advertise for sale or threaten to advertise for sale any claim
26 as a means of endeavoring to enforce payment thereof or agreeing to do
27 so for the purpose of soliciting claims, except where the licensee has
28 acquired claims as an assignee for the benefit of creditors or where
29 the licensee is acting under court order.

30 (7) Use any name while engaged in the making of a demand for any
31 claim other than the name set forth on his or its current license
32 issued hereunder.

33 (8) Give or send to any debtor or cause to be given or sent to any
34 debtor, any notice, letter, message, or form which represents or
35 implies that a claim exists unless it shall indicate in clear and
36 legible type:

37 (a) The name of the licensee and the city, street, and number at
38 which he is licensed to do business;

1 (b) The name of the original creditor to whom the debtor owed the
2 claim if such name is known to the licensee or employee: PROVIDED,
3 That upon written request of the debtor, the licensee shall make a
4 reasonable effort to obtain the name of such person and provide this
5 name to the debtor;

6 (c) If the notice, letter, message, or form is the first notice to
7 the debtor or if the licensee is attempting to collect a different
8 amount than indicated in his or its first notice to the debtor, an
9 itemization of the claim asserted must be made including:

10 (i) Amount owing on the original obligation at the time it was
11 received by the licensee for collection or by assignment;

12 (ii) Interest or service charge, collection costs, or late payment
13 charges, if any, added to the original obligation by the original
14 creditor, customer or assignor before it was received by the licensee
15 for collection, if such information is known by the licensee or
16 employee: PROVIDED, That upon written request of the debtor, the
17 licensee shall make a reasonable effort to obtain information on such
18 items and provide this information to the debtor;

19 (iii) Interest or service charge, if any, added by the licensee or
20 customer or assignor after the obligation was received by the licensee
21 for collection;

22 (iv) Collection costs, if any, that the licensee is attempting to
23 collect;

24 (v) Attorneys' fees, if any, that the licensee is attempting to
25 collect on his or its behalf or on the behalf of a customer or
26 assignor;

27 (vi) Any other charge or fee that the licensee is attempting to
28 collect on his or its own behalf or on the behalf of a customer or
29 assignor.

30 (9) Communicate or threaten to communicate, the existence of a
31 claim to a person other than one who might be reasonably expected to be
32 liable on the claim in any manner other than through proper legal
33 action, process, or proceedings except under the following conditions:

34 (a) A licensee or employee of a licensee may inform a credit
35 reporting bureau of the existence of a claim: PROVIDED, That if the
36 licensee or employee of a licensee reports a claim to a credit
37 reporting bureau, the licensee shall upon receipt of written notice
38 from the debtor that any part of the claim is disputed, forward a copy
39 of such written notice to the credit reporting bureau;

1 (b) A licensee or employee in collecting or attempting to collect
2 a claim may communicate the existence of a claim to a debtor's employer
3 if the claim has been reduced to a judgment;

4 (c) A licensee or employee in collecting or attempting to collect
5 a claim that has not been reduced to judgment, may communicate the
6 existence of a claim to a debtor's employer if:

7 (i) The licensee or employee has notified or attempted to notify
8 the debtor in writing at his last known address or place of employment
9 concerning the claim and the debtor after a reasonable time has failed
10 to pay the claim or has failed to agree to make payments on the claim
11 in a manner acceptable to the licensee, and

12 (ii) The debtor has not in writing to the licensee disputed any
13 part of the claim: PROVIDED, That the licensee or employee may only
14 communicate the existence of a claim which has not been reduced to
15 judgment to the debtor's employer once unless the debtor's employer has
16 agreed to additional communications.

17 (d) A licensee may for the purpose of locating the debtor or
18 locating assets of the debtor communicate the existence of a claim to
19 any person who might reasonably be expected to have knowledge of the
20 whereabouts of a debtor or the location of assets of the debtor if the
21 claim is reduced to judgment, or if not reduced to judgment, when:

22 (i) The licensee or employee has notified or attempted to notify
23 the debtor in writing at his last known address or last known place of
24 employment concerning the claim and the debtor after a reasonable time
25 has failed to pay the claim or has failed to agree to make payments on
26 the claim in a manner acceptable to the licensee, and

27 (ii) The debtor has not in writing disputed any part of the claim.

28 (e) A licensee may communicate the existence of a claim to its
29 customers or clients if the claim is reduced to judgment, or if not
30 reduced to judgment, when:

31 (i) The licensee has notified or attempted to notify the debtor in
32 writing at his last known address or last known place of employment
33 concerning the claim and the debtor after a reasonable time has failed
34 to pay the claim or has failed to agree to make payments on the claim
35 in a manner acceptable to the licensee, and

36 (ii) The debtor has not in writing disputed any part of the claim.

37 (10) Threaten the debtor with impairment of his credit rating if a
38 claim is not paid.

1 (11) Communicate with the debtor after notification in writing from
2 an attorney representing such debtor that all further communications
3 relative to a claim should be addressed to the attorney: PROVIDED,
4 That if a licensee requests in writing information from an attorney
5 regarding such claim and the attorney does not respond within a
6 reasonable time, the licensee may communicate directly with the debtor
7 until he or it again receives notification in writing that an attorney
8 is representing the debtor.

9 (12) Communicate with a debtor or anyone else in such a manner as
10 to harass, intimidate, threaten, or embarrass a debtor, including but
11 not limited to communication at an unreasonable hour, with unreasonable
12 frequency, by threats of force or violence, by threats of criminal
13 prosecution, and by use of offensive language. A communication shall
14 be presumed to have been made for the purposes of harassment if:

15 (a) It is made with a debtor or spouse in any form, manner, or
16 place, more than three times in a single week;

17 (b) It is made with a debtor at his or her place of employment more
18 than one time in a single week;

19 (c) It is made with the debtor or spouse at his or her place of
20 residence between the hours of 9:00 p.m. and 7:30 a.m.

21 (13) Communicate with the debtor through use of forms or
22 instruments that simulate the form or appearance of judicial process,
23 the form or appearance of government documents, or the simulation of a
24 form or appearance of a telegraphic or emergency message.

25 (14) Communicate with the debtor and represent or imply that the
26 existing obligation of the debtor may be or has been increased by the
27 addition of attorney fees, investigation fees, service fees, or any
28 other fees or charges when in fact such fees or charges may not legally
29 be added to the existing obligation of such debtor.

30 (15) Threaten to take any action against the debtor which the
31 licensee cannot legally take at the time the threat is made.

32 (16) Send any telegram or make any telephone calls to a debtor or
33 concerning a debt or for the purpose of demanding payment of a claim or
34 seeking information about a debtor, for which the charges are payable
35 by the addressee or by the person to whom the call is made.

36 (17) In any manner convey the impression that the licensee is
37 vouched for, bonded to or by, or is an instrumentality of the state of
38 Washington or any agency or department thereof.

1 (18) Collect or attempt to collect in addition to the principal
2 amount of a claim any sum other than allowable interest, collection
3 costs or handling fees expressly authorized by statute, and, in the
4 case of suit, attorney's fees and taxable court costs.

5 (19) Procure from a debtor or collect or attempt to collect on any
6 written note, contract, stipulation, promise or acknowledgment under
7 which a debtor may be required to pay any sum other than principal,
8 allowable interest, and, in the case of suit, attorney's fees and
9 taxable court costs.

10 (20) Upon notification by a debtor, that a police report has been
11 filed indicating that the debtor's checkbook or other series of
12 preprinted written instruments has been stolen, and upon receipt of a
13 copy of the report, fail to accept one single writing from the debtor
14 that identifies the numbers of the checks, the bank, and account
15 number, that disputes creditors' claims for the identified checks or
16 written instruments and that includes a copy of the debtor's driver's
17 license or other document containing the debtor's signature that was
18 executed before the date of claim identified in the police report. If
19 more than one collection agency is attempting collection on individual
20 checks or written instruments that are part of the series, each
21 collection agency may request a single writing from the debtor that
22 disputes creditors' claims for the entire checkbook or series. Once a
23 single writing has been received, the collection agency must not,
24 except in the context of a judicial or administrative proceeding,
25 contact the debtor orally within the one hundred eighty-day period
26 after receipt of the writing to require additional proof, explanation,
27 or evidence from the debtor disputing creditors' claims regarding the
28 enumerated checks or other written instruments in the same series or
29 lot and must consider the single writing as a dispute to all creditors'
30 claims arising from use of the enumerated checks or other series of
31 instruments.

32 **Sec. 18.** RCW 9.35.010 and 1999 c 368 s 2 are each amended to read
33 as follows:

34 (1) No person may obtain or attempt to obtain, or cause to be
35 disclosed or attempt to cause to be disclosed to any person, financial
36 information from a financial information repository:

37 (a) By knowingly making a false, fictitious, or fraudulent
38 statement or representation to an officer, employee, or agent of a

1 financial information repository with the intent to deceive the
2 officer, employee, or agent into relying on that statement or
3 representation for purposes of releasing the financial information;

4 (b) By knowingly making a false, fictitious, or fraudulent
5 statement or representation to a customer of a financial information
6 repository with the intent to deceive the customer into releasing
7 financial information or authorizing the release of such information;

8 (c) By knowingly providing any document to an officer, employee, or
9 agent of a financial information repository, knowing that the document
10 is forged, counterfeit, lost, or stolen; was fraudulently obtained; or
11 contains a false, fictitious, or fraudulent statement or
12 representation, if the document is provided with the intent to deceive
13 the officer, employee, or agent to release the financial information.

14 (2) No person may request another person to obtain financial
15 information from a financial information repository and knows or should
16 have known that the person will obtain or attempt to obtain the
17 information from the financial institution repository in any manner
18 described in subsection (1) of this section.

19 (3) ~~((As used in this section, unless the context clearly requires~~
20 ~~otherwise:~~

21 ~~(a) "Financial information" means, to the extent it is nonpublic,~~
22 ~~any of the following information identifiable to the individual that~~
23 ~~concerns the amount and conditions of an individual's assets,~~
24 ~~liabilities, or credit:~~

25 ~~(i) Account numbers and balances;~~

26 ~~(ii) Transactional information concerning any account; and~~

27 ~~(iii) Codes, passwords, social security numbers, tax identification~~
28 ~~numbers, driver's license or permit numbers, state identification numbers~~
29 ~~issued by the department of licensing, and other information held for~~
30 ~~the purpose of account access or transaction initiation.~~

31 ~~(b) "Financial information repository" means any person engaged in~~
32 ~~the business of providing services to customers who have a credit,~~
33 ~~deposit, trust, stock, or other financial account or relationship with~~
34 ~~the person.~~

35 ~~(c) "Person" means an individual, partnership, corporation, or~~
36 ~~association.~~

37 ~~(4))~~ No provision of this section shall be construed so as to
38 prevent any action by a law enforcement agency, or any officer,
39 employee, or agent of such agency, or any action of an agent of the

1 financial information repository when working in conjunction with a law
2 enforcement agency.

3 ((+5)) (4) This section does not apply to:

4 (a) Efforts by the financial information repository to test
5 security procedures or systems of the financial institution repository
6 for maintaining the confidentiality of customer information;

7 (b) Investigation of alleged employee misconduct or negligence; or

8 (c) Efforts to recover financial or personal information of the
9 financial institution obtained or received by another person in any
10 manner described in subsection (1) or (2) of this section.

11 ((+6)) (5) Violation of this section is a class C felony.

12 ((+7)) (6) A person ((that-[who])) who violates this section is
13 liable for five hundred dollars or actual damages, whichever is
14 greater, and reasonable attorneys' fees. If the person violating this
15 section is a business that repeatedly violates this section, that
16 person also violates the Consumer Protection Act, chapter 19.86 RCW.

17 **Sec. 19.** RCW 9.35.020 and 1999 c 368 s 3 are each amended to read
18 as follows:

19 (1) No person may knowingly use or knowingly transfer a means of
20 identification of another person with the intent to commit, or to aid
21 or abet, any unlawful activity harming or intending to harm the person
22 whose identity is used, or for committing any felony.

23 (2) ~~((For purposes of this section, "means of identification" means~~
24 ~~any information or item that is not describing finances or credit but~~
25 ~~is personal to or identifiable with any individual or other person,~~
26 ~~including any current or former name of the person, telephone number,~~
27 ~~and electronic address or identifier of the individual or any member of~~
28 ~~his or her family, including the ancestor of such person; any~~
29 ~~information relating to a change in name, address, telephone number, or~~
30 ~~electronic address or identifier of the individual or his or her~~
31 ~~family; any social security, driver's license, or tax identification~~
32 ~~number of the individual or any member of his or her family; and other~~
33 ~~information which could be used to identify the person, including~~
34 ~~unique biometric data.~~

35 (+3)) Violation of this section is a class C felony.

36 ((+4)) (3) A person ((that-[who])) who violates this section is
37 liable for five hundred dollars or actual damages, including costs to
38 repair the person's credit record, whichever is greater, and reasonable

1 attorneys' fees. If the person violating this section is a business
2 that repeatedly violates this section, that person also violates the
3 Consumer Protection Act, chapter 19.86 RCW.

4 NEW SECTION. **Sec. 20.** (1) The attorney general, in consultation
5 with representatives from individual consumers, public interest
6 organizations, financial institutions, retailers, online services, the
7 legislature, and other interested parties shall:

8 (a) Examine information-sharing practices among information
9 custodians and their affiliates;

10 (b) Develop a model privacy policy disclosure to conform with the
11 disclosure requirements of sections 4, 5, 6, and 7 of this act;

12 (c) Present recommendations on affiliate sharing and model privacy
13 policies to the legislature at the start of the regular session held in
14 2001.

15 (2) The senate committee on commerce, trade, housing and financial
16 institutions and the house of representatives committee on financial
17 institutions and insurance shall conduct a joint review of the
18 practices of entities that collect and sell personal and sensitive
19 information obtained from the records maintained by government agencies
20 and nonprofit entities.

21 NEW SECTION. **Sec. 21.** Sections 1 through 14 of this act
22 constitute a new chapter in Title 19 RCW.

23 NEW SECTION. **Sec. 22.** Section captions used in sections 1 through
24 16 of this act are not part of the law.

25 NEW SECTION. **Sec. 23.** If any provision of this act or its
26 application to any person or circumstance is held invalid, the
27 remainder of the act or the application of the provision to other
28 persons or circumstances is not affected.

29 NEW SECTION. **Sec. 24.** Sections 1 through 14 of this act take
30 effect June 1, 2001."

1 **ESSB 6513** - S AMD - 309

2 By Senator Prentice

3

4 In line 3 of the title, after "information;" strike the remainder
5 of the title and insert "amending RCW 19.16.250, 9.35.010, and
6 9.35.020; adding new sections to chapter 9.35 RCW; adding a new chapter
7 to Title 19 RCW; creating new sections; prescribing penalties; and
8 providing an effective date."

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